IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

C. S. THOMPSON ET AL.,
PLAINTIFFS IN ERROR,
v.
THE LOS ANGELES FARMING AND MILLING COMPANY.

No. 87.

In Error to the Supreme Court of the State of California.

PETITION OF PLAINTIFFS IN ERROR FOR A REHEARING.

To the Honorable the Judges of the Supreme Court of the United States:

Upon examination of the decision of this Honorable Court in this case, announced by Mr. Justice McKenna on the 7th of January, 1901, plaintiffs in error most respectfully believe that in said decision there is error of law; and that, therefore, the alleged errors complained of should be presented to the Court. Wherefore, they most

respectfully petition this Honorable Court to grant a rehearing of the cause on grounds hereinafter set forth:

First. The decision of this Honorable Court is believed to misapply the doctrine of the case of *Beard* v. *Federy*, 3 Wall. 478.

Second. The decision is also believed to misapply the doctrine of *More* v. *Steinbach*, 127 U. S., 70 thereby, in effect, overruling the earlier decisions of this Court in *United States* v. *Vallejo*, 1 Black, 541, *United States* v. *Workman*, 1 Wall. 745, *United States* v. *Vigil*, 13 Wall. 449, and other cases cited and referred to by counsel for plaintiffs in error in briefs filed in court prior to the hearing.

First. In the decision it is said:

"Plaintiffs in error deny the applicability of *Beard* v. *Federy*, to the case at bar. We think it is applicable."

Counsel for plaintiffs in error have evidently been unfortunate in their presentation of the case, to give to the Court the impression stated in the quotation above. We certainly did not intend to deny the applicability of the *Beard-Federy* case to the case at bar. What we intended to convey to the Court, and what has been our contention from the beginning, was, that the *Beard-Federy* case was a controlling authority in our favor in respect of one of our principal contentions, viz: That, in a suit in ejectment, where the plaintiff had to rely upon the strength of his own title and not on the weakness of that of his adversary, and where the integrity of the patent from the United States and the grant from the foreign government upon which said patent was based was attacked on the ground of its being absolutely void, the trial court, and this Court also, could inquire into the validity of the pre-

tended grant *for the purpose of ascertaining whether there was any jurisdiction in the Board of Land Commissioners to confirm the grant, in the first instance;* and, for this purpose, to investigate and consider the petition that had been presented to the board and all of the other papers of the pretended title to the tract of land for which a grant had been made by the foreign government. That was our contention, and that, it was insisted, and is still insisted, was decided favorably to our contention by the decision in the *Beard-Fedory* case. The question there was as to the validity of the grant to the Bishop of Alemany by the Mexican government; and the plaintiff, in order to recover, had to show that his title was good. In order for the Court to determine the character and validity of the title set up by the plaintiff, it had to inquire into the validity of the grant in the first instance; and the object of this inquiry was to determine *whether the board of land commissioners had jurisdiction of the claim which had been presented to it for confirmation.* In that case the Court, after investigating the facts mentioned, determined that the board *did* have jurisdiction, for the reason that the grant to the Bishop was such a grant as the proper authorities had the right to make under the law. But, as pointed out in the briefs filed on behalf of the plaintiffs in error, if the Court had found in that case that the grant to the Bishop was without warrant of law on the part of the authorities making it, then the decision must of necessity have been that the board of land commissioners would not have had jurisdiction to consider the claim at all, and their alleged confirmation would not have been of any effect whatever, and the title of the plaintiff in that case would have failed. If such is not the ruling of the case mentioned, then it is impossible in any case to ever controvert the findings of the board of

land commissioners except by an appeal from their decision. It could never be attacked collaterally. In fact, the decision complained of herein, in effect, goes upon the theory that *in no instance* can any collateral attack be made upon a confirmation made by the board of land commissioners. Such a doctrine, it is most respectfully submitted, is directly in the teeth of the decision in the *Beard-Federy* case, and finds no support in any other decision of this Court. The board of land commissioners was a special tribunal created for a special purpose; and to assert that the judgments of that tribunal are not open to a collateral attack is to give to them more efficacy than has ever been given even to the judgments of courts of general jurisdiction. The rule, as we understand it, is that all special tribunals must show jurisdiction affirmatively, and their jurisdiction is never presumed. This is elementary law. Hence, jurisdiction by the board of land commissioners could never be presumed at all; and, in order to be shown, it must appear from the allegations of the petition presented to it that the claim was one growing out of the Mexican or Spanish law, and not a claim made in violation of the law; not a grant made in the very teeth of the law and in direct violation of the statute under which it pretended to have been made.

The case is very much like a proceeding in a Probate Court for letters of administration on the estate of a decedent, where the law specifically declares that the Court shall have jurisdiction only of the estates of persons resident of the county in which the court is situated. Suppose, for instance, that a petition should be presented to the Court for letters of administration on the estate of a person who had lived and died in another county, and whose property was all situated in that county, and the Court should go ahead and grant letters of

administration on such estate, *contrary to the statutes in such cases made and provided;* would it be contended for an instant that such action of the Court would stand for an instant against a collateral attack? Manifestly not; and for the very reason that the Court did not have any jurisdiction in the premises, and the fact of lack of jurisdiction appeared upon the face of the petition which had been presented to the Court for its action and judgment in the premises. So, in the case at bar, the board of land commissioners being a special tribunal, with a limited jurisdiction, must of necessity have been limited to hear and determine only these cases in which it appeared from the allegations of the petition presented to them that the grant was made, *not in violation of the law*, not in the very teeth of the statute of the foreign government, but in accordance with the law and in conformity to the statute authorizing a grant of lands from the Mexican or Spanish governments, as we most respectfully contend the petition in the case at bar does.

Whatever might have been said by the Court in the opinion that was foreign to the point under consideration cannot be considered in any light except as purely *obiter dictum.*

Second. This leads up to the consideration of the case of *More* v. *Steinbach*, upon which the main reliance of the decision complained of seems to rest. The Court in that case proceeded upon the theory that there must have been some special circumstances attending the grant to Poli, else it would not have been confirmed by this Honorable Court on appeal; and, as pointed out in the brief of Mr. Montgomery, the Court was justified in making such an assumption because, in the trial court, in the *More-Steinbach* case, no evidence had been introduced or offered to show that the grant to Poli was without au-

thority of law, as was done in the case at bar, and inasmuch as it seemed to appear that the Poli grant had been confirmed by this Honorable Court on appeal. Now, when the fact is established, as it is by the records of this Honorable Court, that the Poli grant never *was* confirmed by this Honorable Court except by a dismissal of the appeal by the Attorney-General, and the record facts appear, as they do, that in the *More-Steinbach* case no evidence had been offered to show, on the trial of that case, that the grant was invalid and void and that the board of land commissioners did not have any authority to consider and adjudicate and confirm the claim of Poli, then, we say, it is a very different case from the case at bar.

What this Court meant by "special circumstances" attending the Poli grant is thus fully explained; and, it is most respectfully submitted, does not mean anything like it has been construed to mean by the decision herein complained of.

What the decision complained of considers "special circumstances," attending the attempted grant herein, were evidently the fact that the governor of the Californias was in need of money to keep the troops of the United States out of his territory just at the outbreak of the Mexican war; and that, inasmuch as he was endeavoring to raise funds for this purpose, he had a special dispensation from the Supreme Government of Mexico to do with the public domain simply as he pleased, and might, in such an emergency, dispose of any and all of the public domain or of the mission lands in the territory for a money consideration. Now, if these are "special circumstances," within the meaning of the decision of the Court in *More* v. *Steinbach*, we submit most humbly that we fail to so understand it. Those were the ordinary and usual cir-

cumstances attending every grant and attempted grant that was made by the usurper Pico, and they so appear in the cases of *Workman* and *Vallejo* above referred to. In those cases, while the same state of facts was shown in each case, in respect of the raising of funds for the purpose of repelling the American forces, it never occurred to this Court that they were of such a character as to warrant the overthrowing of the statutes of Mexico for the disposal of her public domain or for the disposal of her mission lands. On the contrary, in those cases, the Court held that such facts and circumstances did not repeal the direct provisions of the law relating to the disposal of the public domain or the mission lands; and that, even under such circumstances, the laws relating to the disposal of the public domain and the mission lands were still in force, and had in no way been abridged or their efficacy curtailed or limited in any respect whatever. To repeat, therefore, every one of the so-called "special circumstances" attending the pretended de Celis grant, existed in the cases of the pretended grants in the *Workman* and *Vallejo* cases; and in neither of those cases was there any doubt in the minds of the majority of the Court that they were of any efficacy whatever to authorize an act by the provisional governor (who was in fact an usurper) which was forbidden by the Mexican law.

So that when the decision states that if the papers that were offered on the trial of the cause at bar to show the invalidity of the pretended grant to de Celis had been admitted, they would have shown that the grant was valid, we most respectfully but earnestly submit it is in direct conflict with the decisions of *Workman* and *Vallejo*, and also in direct violation of the decision of the Court in the *Beard-Fedory* case, where the authority of these cases was not only *not* questioned, but was directly

affirmed and relied upon to show that the pretended grant to the defendant in that case was of the same character as those in the cases mentioned, and was therefore void absolutely.

Again, the decision complained of states that "there is nothing in either of these papers (the petition for confirmation and the decision of the board) which show that exceptional circumstances with reference to the sale to de Celis did not exist."

This, it is submitted, shifts the burden of proof, and overturns the well settled rule of law above referred to, that jurisdiction in a special tribunal to hear and determine causes is not only *not* to be presumed, but must always be shown affirmatively upon the face of the petition that is presented for the judgment of such special tribunal. It goes upon the theory that the jurisdiction of the board is to be presumed unless the contrary be shown; whereas, the correct rule of the law is that the jurisdiction must be shown affirmatively and will never be presumed.

Wherefore, for the foregoing reasons, plaintiffs in error respectfully pray this Honorable Court to grant them a rehearing of said cause.

HARVEY M. FRIEND,
Counsel for Plaintiffs in Error.

I, Harvey M. Friend, counsel for the plaintiffs in error herein, do certify that, in my judgment, the foregoing petition for rehearing is well founded, and that the same is not interposed for delay.

HARVEY M. FRIEND,
Counsel for Plaintiffs in Error.